IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 38 OF 2001

M/S BHARTIYA DEVELOPMENT FINANCE LTD. ....Applicant

Ms.Amira Razak, Advocate for the Applicant.

Coram:- N. A. BRITTO, J.

Date:- 11th August, 2006

ORAL ORDER

Heard Ms. Amira Razaq, the learned Counsel on behalf of the applicant/Official Liquidator. None present on behalf of the respondents. The respondents are also absent.

2. Affidavit in evidence on behalf of the Official Liquidator was filed by Vilas S. Hazare and the same is on record. In the said affidavit, the said Shri Hazare has, inter alia, stated that respondent no.1, Shri Pramod G. Naik, had appeared before this Court and had filed a reply dated 15.06.2001 in which he had stated that "the Judgment Debtor no.1 humbly states that he is solely responsible for the loan transaction and sureties are not responsible for the same". Shri Hazare has stated that from the records in the custody of the Official Liquidator it is seen that respondent no.1 had initially applied for a loan of Rs.12,000/- vide his application dated 17.06.1996 and the said application was also signed by Smt. Pramodini P. Naik, respondent no.3, as surety for respondent no.1. The said Shri Hazare has produced the loan application which is at exhibit A.w.1/3. He has further stated that respondent no.1 had addressed another letter dated 18.06.1996, to the Manager of the Company in liquidation, and the copy of the said letter has been produced as exhibit A.w.1/4. Shri Hazare has stated that from the records of the Company (in liquidation), respondent no.1 was granted a loan of Rs.12,000/- and an Agreement for

loan was executed on 18.06.1996 and in terms of the said Agreement, the respondent no.1 jointly and severally along with his surety, the respondent no.3, agreed to pay the loan of Rs.12,000/- in three instalments of Rs.4,200/- each and the said loan was required to be paid on or before 18.09.1996, together with interest at the rate of 20% per annum or such rates as may be fixed by the Company from time to time and that it was also agreed (as per Clause 5 of the Agreement), that interest was to be paid with quarterly rests and any amount outstanding on 31st March, 30th June, 30th September and 31st December every year, shall be added to the amount of the loan and carry interest at the usual rate till paid off and the said loan Agreement was also signed by respondent no.3, the said Smt. Pramodini P. Naik. The said Agreement has been produced at exhibit A.w.1/5. Shri Hazare has also stated that respondent nos. 1 and 3 also signed a Promissory Note dated 18.06.1996, promising to pay the said loan of Rs.12,000/- with interest at the rate of 20% per annum. The copy of the Promissory Note dated 18.06.1996, has been produced at exhibit A.w.1/6. Shri Hazare has further stated that respondent no.1 thereafter by his application dated 23.08.1996, applied for a further loan of Rs.15,000/-. The copy of the application has been produced at exhibit A.w.1/7 and in terms thereof, respondent no.1 entered into an agreement on 24.08.1996 and, as per the said Agreement, the said loan of Rs.15,000/- was required to be repaid on or before 29.08.1996, together with interest at the rate of 20% per annum or such rates as may be fixed by the Company from time to time and it was also agreed that interest should be paid with quarterly rests on the amounts outstanding on 31st March, 30th June, 30th September and 31st December every year, should be added to the amount of the loan and carry interest at the usual rate till paid off. It is also stated that respondent no.1 signed a Promissory Note on 24.08.1996, promising to pay the said additional amount of Rs.15,000/- on demand with interest at the rate of 20%. Copies of the said Agreement and the said loan have been produced at exhibit A.w.1/8 and A.w.1/9. Shri Hazare has stated that the loan ledger shows that respondent no.1 was not regular in repayment of the loan amount as agreed before the date of liquidation of the Company. A copy of the loan ledger has been produced at exhibit

A.w.1/10. Shri Hazare has stated that a resgistered A.D. letter dated 17.01.1997, was addressed to respondent no.1 by the Company in liquidation, prior to its liquidation, bringing to his notice that an amount of Rs.31,104.89, was due by him and he was requested to remit the said amount. A copy of the said letter along with A.D. has been produced at exhibit A.w.1/11 colly. Shri Hazare has stated that respondent no.1 failed to respond to the said notice dated 17.01.1997 and, therefore, a reminder was sent to respondent no.1 and a copy of it was forwarded to respondent no.3 requesting them to pay the balance of Rs.32,785.30 on or before 19.04.1997, failing which, interest at the rate of 36% would be charged from 19.04.1997. Shri Hazare has stated that a third reminder was also sent on 21.08.1997 to respondent no.1. It is also stated that one more letter dated 16.09.1971 was sent to respondent no.1 demanding an amount of Rs.34,514/-. Shri Hazare has further stated that yet another letter dated 23.01.1998 was sent by the Company in Liquidation to the respondent no.1 to settle the outstanding amount of Rs.38,200/-.

3. As per Shri Hazare, the records in the custody of the Official Liquidator show that an amount of Rs.50,175.02 was outstanding as on the date of the winding up of the Company. He has further stated that the deposits of respondent no.1 were adjusted against the amount outstanding as against the date of the winding up and another sum of Rs.5,000/- was also adjusted and after the said adjustment, the claim application was filed for the balance amount of Rs.49,675.02 plus Rs.100/- towards postage charges and Rs.20,698/- being the interest up to 31.01.2001, with future interest at the rate of 20% from 01.02.2001 till the date of final payment. The total amount claimed by the Official Liquidator is Rs.70,473/- as on 31.01.2001, which the Official Liquidator seeks to recover with interest at the rate of 20% at quarterly rests.

4. The original documents are seen and returned.

5. I have no hesitation to accept what has been stated on behalf of the Official Liquidator by Shri Hazare and based on his statement and

documents produced by him, decree the claim of the Official Liquidator against respondent nos. 1 and 3 in the sum of Rs.49,775.02 with pending interest at the rate of 20% calculated at quarterly rests and future interest at the rate of 6% until payment. The claim against respondent no.2 is dismissed.

N. A. BRITTO, J.

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